

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN RE:

KENNETH WAYNE LUDWIG,

Debtors.

YES HOMESALES EXP, LLC,

Movant,

v.

KENNETH WAYNE LUDWIG, Debtor
S. GREGORY HAYS, Chapter 7 Trustee

Respondents.

Case No.: 21-57140-sms

Chapter 7

CONTESTED MATTER

NOTICE OF ASSIGNMENT OF HEARING

PLEASE TAKE NOTICE that Yes Homesales EXP, LLC has filed a Motion for Relief From Automatic Stay and related papers with the Court seeking an order granting relief from the automatic stay.

PLEASE TAKE FURTHER NOTICE that the Court will hold an initial telephonic hearing for announcements on the Motion for Relief from Automatic Stay at the following number: (toll-free number 833-568-8864; meeting id 161 179 4270, at 10:00 A. M. on December 15, 2021 in Courtroom 1201, United States Courthouse, 75 Ted Turner Drive, SW, Atlanta, Georgia 30303.

Matters that need to be heard further by the Court may be heard by telephone, by video conference, or in person, either on the date set forth above or on some other day, all as determined by the Court in connection with this initial telephonic hearing. Please review the "Hearing Information" tab on the judge's webpage, which can be found under the "Dial-in and Virtual

Bankruptcy Hearing Information” link at the top of the webpage for this Court, www.ganb.uscourts.gov for more information.

Your rights may be affected by the Court's ruling on these pleadings. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.) If you do not want the Court to grant the relief sought in these pleadings, or if you want the Court to consider your views, then you and/or your attorney must attend the hearing. You may file a written response to the pleading with the Clerk at the address stated below, but you are not required to do so. If you file a written response, you must attach a certificate stating when, how and on whom (including addresses) you served the response. Mail or deliver your response so that it is received by the Clerk at least two business days before the hearing. The address for the Clerk's Office is: U.S. Bankruptcy Court, Richard B. Russell Federal Building, 75 Ted Turner Drive, SW, Room 1340, Atlanta GA 30303. You must also mail a copy of your response to the undersigned at the address stated below.

If a hearing on the motion for relief from the automatic stay cannot be held within thirty (30) days, Movant waives the requirement for holding a preliminary hearing within thirty days of filing the motion and agrees to a hearing on the earliest possible date. Movant consents to the automatic stay remaining in effect until the Court orders otherwise.

[Signature of counsel on following page]

Dated: November 8, 2021

Rountree Leitman & Klein, LLC

/s/ Elizabeth Childers

David Klein, Ga. Bar No. 183389

Elizabeth Childers, Ga. Bar No. 143546

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Attorneys for Movant

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CONTESTED MATTER

MOTION FOR RELIEF FROM AUTOMATIC STAY

COMES NOW Yes Homesales EXP, LLC (“Movant”) and hereby files this motion for relief from the automatic stay imposed by 11 U.S.C. § 362. In support of this motion, Movant respectfully shows the Court as follows:

1. Kenneth Wayne Ludwig (“Debtor”) filed a voluntary petition (the “Petition”) under Chapter 7 of the Bankruptcy Code on September 23, 2021 (the “Petition Date”).
2. Movant is a creditor of the Debtor pursuant to a residential property lease for the property located at 168 Birch Trail, Kennesaw, GA 30152 Site # T168 (the “Premises”). The Rental Home Lease Agreement (the “Lease”) is attached hereto as Exhibit A.
3. The Debtor is delinquent in rent payments to Movant and is due for the August 2021 payment. The total delinquency with late fees is \$6,088.82.

4. Due to the Debtor's pre-petition default in payments, Movant instituted a dispossessory proceeding in the Cobb County, Georgia court system, which was stayed by the filing of the instant bankruptcy case.

5. The Premises is not part of the Debtor's estate, nor is it property of the Debtor, and, as such, the Debtor has no equity in the Premises for the benefit of the bankruptcy estate.

6. Movant seeks relief from the stay of 11 U.S.C. § 362 so that it may resume the dispossessory proceeding in Cobb County, obtain a Writ of Possession, and recover possession of the Property.

7. Movant requests that the court waive the 14-day stay of its order lifting the automatic stay, pursuant to Fed. R. Bankr. P. 4001 (a)(3).

WHEREFORE, Movant prays that relief from the automatic stay be granted so as to allow the Movant to resume the dispossessory proceeding in the Cobb County court system, obtain a Writ of Possession, and recover possession of the Property, and that the 14-day stay provided for in Fed. R. Bankr. P. 4001 (a)(3) be waived, and for such other relief as the Court deems proper.

Respectfully submitted this November 8, 2021

Rountree Leitman & Klein, LLC

/s/ Elizabeth Childers

David Klein, Ga. Bar No. 183389

Elizabeth Childers, Ga. Bar No. 143546

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2987 Clairmont Road, Suite 350

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dklein@rlklawfirm.com

echilders@rlklawfirm.com

Attorneys for Movant

CERTIFICATE OF SERVICE

This is to certify that I have this day served the following parties with a copy of the foregoing via first class mail, postage prepaid, and/or by the court using the CM/ECF system, which will send an electronic e-mail notification to the parties as indicated below:

Kenneth Wayne Ludwig
168 Birch Trl NW
Kennesaw, GA 30152

Karen King
myecfkingking@gmail.com;
EcfmailR62760@notify.bestcase.com

S. Gregory Hays
ghays@haysconsulting.net,
saskue@haysconsulting.net;
GA32@ecfcbis.com

Office of the United States Trustee
ustpreion21.at.ecf@usdoj.gov

Dated: November 8, 2021

Rountree Leitman & Klein, LLC

/s/ Elizabeth Childers
David Klein, Ga. Bar No. 183389
Elizabeth Childers, Ga. Bar No. 143546
Century Plaza I
2987 Clairmont Road, Suite 350
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(404) 584-1238
dklein@rlklawfirm.com
echilders@rlklawfirm.com
Attorneys for Movant

EXHIBIT A

LEASE

RENTAL HOME LEASE AGREEMENT

This Agreement between the parties indicated is made and entered into this 16th day of January, 2021 and ending 31st day of January, 2022, by and between **YES Homesales EXP, LLC ("Owner")**, 5050 S. Syracuse Street, Suite 1200 Denver, CO 80237 DBA Woodlands of Kennesaw.

RESIDENT(S) ("Resident") Kenneth Wayne Ludwig and Kimberly Jo Daniel

Address: 168 Birch Trail, Kennesaw, GA 30152 Site #: T168 ("Premises")

Parking is available on the Premises unless otherwise designated: DRIVEWAY ONLY

Other Charges: \$20 Trash, water and sewer metered, \$4.03 Storm Water

Monthly Rental	<u>\$1,330.00</u>	Term	<u>14 Months</u>	Starting Date	<u>01/16/2021</u>
	<u> </u>		<u> </u>		<u> </u>
	<u> </u>		<u> </u>		<u> </u>
Cleaning Fee	<u>\$1,995.00</u>	Advanced Rent Collected	<u>\$</u>	Key Charge	<u>\$0.00</u>
Late Fee	<u>\$75.00</u>	Charged On	<u>6th</u>	Return CK Fee	<u>\$25.00</u>
Late Fee	<u>N/A</u>	Charged On	<u>N/A</u>		
Late Fee	<u>N/A</u>	Charged On	<u>N/A</u>		

Number of Persons to Live in Home and Names.

1. Kenneth Wayne Ludwig	<u>11/15/1977</u>
Resident Name	DOB
2. Kimberly Jo Daniel	<u>10/06/1982</u>
Resident Name	DOB

Included Utilities:None

Emergency Maintenance Number:770-422-2080 opt 3

Notice required of non-renewal/cancellation: 30 days

Regulation/Property Code that governs Resident rights and Owners obligations (if required):
As stated in Community Guidelines

1. **PARTIES.** This Lease is between the Resident and Owners indicated above for use as a private residence.

2. **TERM.** The term of this lease shall be for a period of 14 month(s), commencing on the start date above. Thereafter, the rental term shall AUTOMATICALLY RENEW annually for a 12 month period unless the Resident(s) notifies the Owners in writing 30 days before the expiration of this rental agreement, or lease anniversary, of their intention not to renew for this term. If the term is not renewed the lease will convert to a month-to-month term and will be subject to Market Monthly Rental Rate increases without further notice. One or more Owners will notify Resident(s) 60 days prior to the automatic renewal date IF the automatic renewal Monthly Rental rate will be adjusted.

3. **TERMINATION.** Owner may terminate this lease without notice for non-payment of rent, violation of the Guidelines For Community Living (Rules and Regulations) ("Guidelines") established, or if the Premises shall be deserted or vacated by Resident, one or more Owners shall at any time thereafter, at such Owner's option, without notice to Resident, declare the leased term ended and terminate this Lease and shall have the right to enter the Premises, or any part thereof, either with or without process of law, to expel, remove and cause Resident's mobile home to be removed from the Premises, using such force as may be necessary to do so. Resident expressly waives all right to any notice of demand under any statute of this state relating to forcible entry and detainer. Resident hereby authorizes Owners to disconnect the utilities, remove the mobile home to storage and to otherwise take any action necessary to evict Resident should the Guidelines of the Community be violated or should Resident become involved in any illegal, hazardous or offensive activities. Furthermore, either Owner may terminate this lease for violation of lease, or a change in land use in compliance with governing statutes.

RENTAL HOME LEASE AGREEMENT

4. **POST EVICTION POSSESSION PERIOD.** If Tenant is evicted from the Community, Tenant shall have the right to sell their manufactured home in place within 45 days after the eviction ("Post Eviction Possession Period"). Notwithstanding the foregoing, Tenant shall be obligated to maintain the Site in accordance with all Community Guidelines during the Post Eviction Possession Period.

5. **EARLY TERMINATION.** Owners may recover as damages for Resident's early termination of a lease agreement, the amount of rent and other amounts owed remaining outstanding for the term of the lease as allowed by governing statutes.

6. **PAYMENTS.** Resident shall make rental payments by money order or check and NOT CASH. Owners each reserve the right to require money order or certified check, should any personal check be dishonored. Amounts paid by Resident shall first be applied to discharge any past due amounts, including but not limited to, late fees, check charges, taxes and utility bills owed by Resident. After such past due amounts have been paid, the remainder of any moneys received shall be applied to past due rent, then current rent. Resident's home taxes, including home personal property taxes, are in most areas paid by one or more of the Owners each year and in most cases 1/12th of the amount is added to the above rent. For the first year, monthly amount may be estimated

7. **LATE PAYMENT FEE.** Payments are due on the first of each month. All payments shall be forwarded to the Community Office as instructed by Owners, on or before the due date. "Late Fee" will be assessed for all payments **not** received at the Community Office **by** the "Charged On" date outlined above. The "Late Fee" amount and due date may be changed with 60 days written notice.

8. **SUBMETERING.** If the use of any utility to the premises is submetered, depending on state requirements, there may be an attached "Submetering Addendum".

9. **USE OF PREMISES.** The property rented shall be used only as the primary residence of the listed Resident and family. No other persons shall occupy the home without the express written consent of the Owners. No assignment will be allowed.

10. **GUIDELINES FOR COMMUNITY LIVING (RULES AND REGULATIONS).** Resident agree to abide by, and to insure that Resident's family and guests abide by all Guidelines for Community Living ("Guidelines") and any amendments thereto. Resident acknowledges receipt of a copy of such Guidelines as of the date hereof. The Guidelines and any amendments thereto are incorporated herein by reference and made a part hereof for all purposes. Resident agrees that Owners shall have the right to modify, amend, change or replace such Guidelines in Owners' sole and exclusive discretion and at such time or times as Owners may desire. Owners agree to give Resident written notice at least thirty (30) days prior to any modification, change, amendment or replacement. Any breach or violation of such Guidelines is expressly declared to be a breach of this Agreement.

11. **INSTALLATION.** Homes shall be underpinned, secured, connected and tied down immediately after occupancy in accordance with applicable governmental statutes, ordinances, or regulations. Such shall be Resident's responsibility and Owners shall in no way be liable, or responsible for any improper installation.

12. **UTILITIES.** Resident shall pay for all utilities, except those expressly provided for above. Resident is responsible for any damage as a result of utilities being turned off.

13. **REMOVAL OF PERSONAL PROPERTY.** Resident will not remove or take personal property from the premises while any amounts remain unpaid. Each Owner is authorized to seize and retain such property until Resident has paid in full all amounts owed to Owners. Decks may not be removed from premises until all amounts are paid in full and the premises are restored to original condition.

14. **RIGHT OF ENTRY.** Owners are each authorized to enter the Premises to make repairs, alterations, or inspections. Each Owner may enter Resident's home if an emergency exists or if Resident abandons the home. In case of rental or lease purchase option homes, each Owner is authorized to make unscheduled visits to inspect for safety and cleanliness. Any damage to either Owner's property is grounds for termination of the Lease.

15. **ATTORNEY FEES.** Resident agrees to pay all attorney fees and expenses necessary and appropriate arising out of any action one or more of Owners deemed necessary to protect one or more of Owners' interest.

16. **SEVERABILITY.** If any provision of this Lease shall be declared invalid or unenforceable, the remainder of the Lease shall continue in full force and effect.

17. **OTHER FACILITIES.** Resident agrees that any recreational or other facilities are provided for the Resident at the discretion of the Owners. Resident does not make any payment toward these facilities without the express consent of the Owners.

18. **INDEMNIFICATION.** Neither Owner is liable for damages due to natural cause, including but not limited to wind, water, snow or ice. Resident hereby agrees to indemnify and hold Owners harmless for any injury or death to any person or damage to any property arising out of the use of the Premises by Resident, Resident's family, agents, employees, guests or invitees.

Resident is to keep the manufactured home and Premises in good and safe condition, and notify Owners immediately of any unsafe or unsanitary conditions on the Premises. Neither Owner shall be liable to Resident for any damages arising out of any actions or

RENTAL HOME LEASE AGREEMENT

negligence on the part of any other residents or their families, agents, employees, guests or invitees. Resident agrees to pay Owners for any damages caused by Resident, Resident's family, agents, employees, guests or invitees, whether such damage is sustained by said Resident, said Resident's family, agents, employees, guests or invitees.

19. MAINTENANCE RESPONSIBILITIES. Each Owner shall comply with known applicable governing statutes and Companies shall (i) maintain all common areas; (ii) maintain all utility lines installed in the community by either Owner unless the utility lines are maintained by a public utility; (iii) maintain individual mailboxes for the Resident unless mailboxes are permitted on the Premises; (iv) provide access roads to the Premises; (v) provide services (which may be at Resident's expense) for common collection of trash from the Community; and (vi) repair or remedy conditions on the premises that materially affect the physical health or safety of an ordinary Resident of the manufactured home community.

20. GOLD KEY SERVICE. Resident acknowledges and understands the community maintenance service personnel will enter all rental homes to perform Gold Key Service checks with state required notification. The goal of these Gold Key Service Checks is to (1) ensure the home safety equipment including fire/smoke detectors and other safety related equipment are operable. Disconnect of safety equipment by the resident is not permitted, (2) maintain and preserve the quality of the rental home, (3) to proactively identify and resolve maintenance issues.

I hereby grant authorization for Company Representatives to enter the home in my absence and agree to the following terms: (1) Gold Key Service will be performed monthly or at least once quarterly (2) Community Staff will give each resident a written reminder at least 24 hours in advance of any Gold Key Service appointment. (3) Failure to allow access during this timeframe or to schedule an alternate Gold Key Service check will result in a warning notice. An additional failure to allow access during the Gold Key Service timeframe or failure to re-schedule a Gold Key Service check will result in a \$25 rescheduling fee. (4) Home locks may not be changed without Community Management approval. A \$25 fee will be charged to Resident if locks are changed without written request and community approval.

21. INSPECTOR BY RESIDENT. Resident warrants and covenants that a full and complete inspection of the Premises and of the Community and all of its facilities has been made and that all of such were found to be in good, safe and habitable condition.

22. SALE OR CLOSURE OF COMMUNITY. Landlord agrees to provide Tenant no less than 60 days written notice prior to any planned sale or closure of the Community.

THIS CERTIFIES THAT RESIDENT HAS READ THIS LEASE AND THE GUIDELINES FOR COMMUNITY LIVING (RULES AND REGULATIONS), RECEIVED A COPY, AND UNDERSTANDS THAT ANY VIOLATION OF ANY PART WILL CONSTITUTE A BREACH OF THIS AGREEMENT AND UNDERSTANDS THAT THEY MAY BE CHANGED FROM TIME TO TIME BY OWNERS. THIS LEASE AGREEMENT SUPERSEDES AND CANCELS ANY PRIOR RENTAL AGREEMENT AND MAY BE AMENDED ONLY BY WRITTEN AGREEMENT SIGNED BY THE PARTIES HERETO.

DocuSigned by:
Owner /
Community Representative 808 Woodlands of Kennesaw
 442ECE43203A481... **Date** 1/16/2021
Yes Companies EXP2 WFC, LLC dba Woodlands of Kennesaw

DocuSigned by:
Homes Owner /
Community Representative 808 Woodlands of Kennesaw
 442ECE43203A481... **Date** 1/16/2021
YES Homesales EXP, LLC dba Woodlands of Kennesaw

DocuSigned by:
Resident Kenneth Wayne Ludwig
 77FA1B81312947E... **Date** 1/15/2021
Kenneth Wayne Ludwig

DocuSigned by:
Resident Kimberly Jo Daniel
 609C8ABE7D054E5... **Date** 1/15/2021
Kimberly Jo Daniel

RENTAL HOME LEASE AGREEMENT**Acknowledgement of New Resident Orientation Video Viewing**

I(we) acknowledge that I(we) have viewed the "YES! Communities New Resident Orientation" Video and understand the Community Guidelines and Expectations of the Community Outlined in this Video.

DocuSigned by:
808 Woodlands of Kennesaw
442ECE43203A481...
Owner / Community Representative **Yes Companies EXP2 WFC, LLC dba Woodlands of Kennesaw** **Date** 1/16/2021

DocuSigned by:
808 Woodlands of Kennesaw
442ECE43203A481...
Homes Owner / Community Representative **YES Homesales EXP, LLC dba Woodlands of Kennesaw** **Date** 1/16/2021

DocuSigned by:
Kenneth Wayne Ludwig
77FA1B81312947E...
Resident **Kenneth Wayne Ludwig** **Date** 1/15/2021

DocuSigned by:
Kimberly Jo Daniel
609C8ABE7D054E5...
Resident **Kimberly Jo Daniel** **Date** 1/15/2021